Ontario. Securities Commission
[Reviews of registrations of brokers and salesmen]

For release Tuesday, March 26/46 - 4.30 p.m.

[1946]
[22 nos in 1 vol.]

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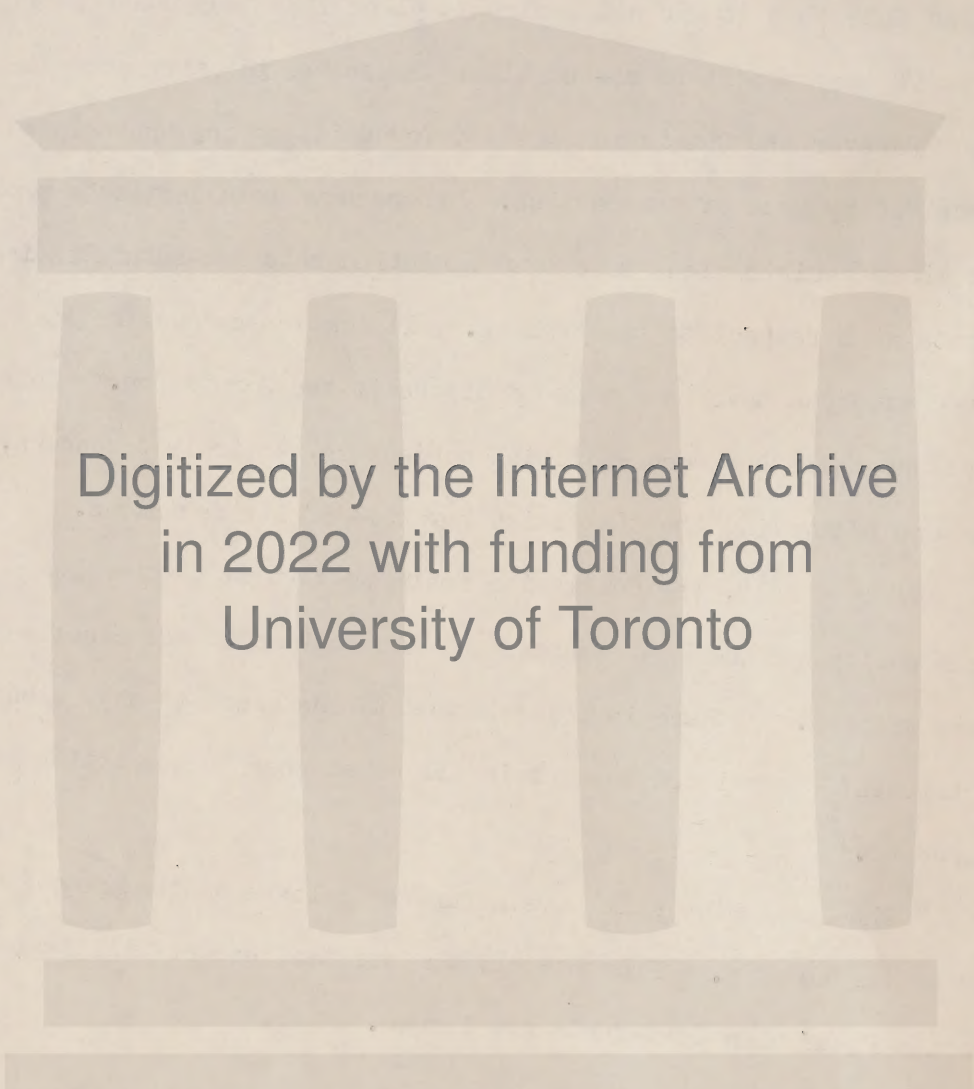

Ontario. Securities' Commission

(1)

THE SECURITIES ACT, 1945
RE W. R. MANNING & COMPANY - W. R. MANNING
JUDGMENT ON APPEAL FROM THE CHAIRMAN
Hearing February 15th, 1946

This is a Review by the full Commission of a decision of the Chairman cancelling the registration of the above-named brokerage firm.

As the result of complaints concerning an Informational Bulletin and an advertisement appearing in The Quebec Miner under date of November 16, 1945 with respect to the shares of Chesgo Mines Limited, an Investigation was ordered and Manning was examined under oath.

There appeared in the circular and in the advertisement the following:-

EXCERPTS FROM REPORT OF ONTARIO GOVERNMENT GEOLOGIST:
H.C. Laird in the 41st Annual Report of the
Ontario Department of Mines, which states:
"The geology in this district is generally regarded as by far the most favorable for the finding of gold deposits, as it is almost exactly similar to the formation in the Kirkland Lake area to the east with its wonderful Gold mines."

The examination under oath clearly disclosed that the words attributed to Dr. Laird in quotes were in fact never used by Dr. Laird, and to that extent at any rate, the circular and the advertisement were false and misleading.

Manning's explanation was to the effect that some Engineering reports and other reports on the property when in the ownership of Buffalo-Ontario Gold Mining Company Limited had been turned over to one, P.W.Graham, Financial Publicity Counsel and that Graham was responsible for the statement attributed to Dr. Laird and was also responsible for it appearing in quotes. Graham wrote a letter to somewhat the same effect.

On the strength of the evidence obtained at the Investigation, the Chairman took the view that the Bulletin and advertisement were definitely false and misleading and that a broker could not be allowed to evade his very serious responsibility to the public by merely explaining that he had retained Financial Counsel who had made an error. Accordingly, the Chairman issued his Order cancelling Manning's registration as a broker.

Since under the Act the Chairman's decisions are subject to review by the full Commission, the whole matter on the application of the broker has been heard de novo.

We are all in accord that the evidence given at the original investigation fully justified some disciplinary action by the Chairman. The question for us to decide is whether in the circumstances cancellation is the action which should be taken.

Under the present Act and even at Common Law a seller of securities is bound to make full, plain and true disclosure of all material facts relevant to the securities offered. There can be no question that the circular and advertisement were false in the quotation attributed to Dr. Laird and it is not without significance that Dr. Laird is referred to as an Ontario Government Geologist and that the words used are referred to as an Excerpt from the 41st Annual Report of the Ontario Department of Mines.

The evidence of Manning and Graham taken at the Review disclosed a complete attitude of irresponsibility on the part of Manning towards the public. He took options on the stock of Chesgo Mines Limited without obtaining any independent report from a Mining Engineer. He does not appear to have consulted one at all. He simply accepted an old report made by one, Dunham who is said to be a Mining Engineer but who appears to have been what one might describe as

a sales engineer since the report contained this statement:-

> "I think it would be difficult to find in Canada a property with more favorable geology and ore indications than exist on the group of claims now held by this Company."

There was also a report said to have come from one, McLean who may or may not have been an Engineer of some kind, according to the evidence. These reports together with one by Mining Research Corporation, made fairly recently, were simply handed over to Graham to prepare an attractive Bulletin to induce the public to buy shares. All in all, the whole procedure indicates a complete irresponsibility, even a recklessness about representations. All Manning appears to have shown any particular interest in was securing money for his own profits. The public has been paying .25¢ to .41¢ a share for shares taken down by Manning at .08¢. The property may be a good one, we cannot say otherwise. But we think the public is entitled to know all of the material facts connected with the venture and this the Bulletin and the advertisement do not accomplish.

Considering all of the evidence before us, we are all of the opinion that the Bulletin and the advertisement contain false and misleading statements and that Manning has displayed a recklessness not consistent with his duty of full disclosure that can only lead to the conclusion that he belongs to the class of brokers whose irresponsibility has tended to bring the mining market into disrepute.

Accordingly, we believe that the original decision of the Chairman must be sustained and the registration cancelled.

Toronto, February 27, 1946.

Ontario. Securities' Commission

(2)

THE SECURITIES ACT, 1945

RE NORMAN MOURIN, SALESMAN

JUDGMENT ON REVIEW

Hearing January 4, 1946

This is an application to the Commission for Review of the Registrar's ruling of December 7, 1945 refusing the applicant's transfer as a salesman from Messrs.C.M. Nash and Company to Messrs. R. Hamilton and Company and also cancelling the applicant's registration with the Commission.

We have already in the Ivan Israel case expressed our interpretation of the duties imposed upon us by Section 82 and Section 10 of the Act. It is unnecessary to repeat. We have also in the Israel case expressed our view as to how these applications should be approached by us.

We refrain from going into particulars except to mention that Mourin in his written application to the former Commission failed to disclose that he had been convicted of keeping a Betting House and that his constant changing of employers is very suspicious.

We do not consider him at all a qualified person to be registered as a salesman.

We are all of the opinion that the Registrar's decision must be sustained. Judgment accordingly.

January 11, 1946.

Ontario Securities' Commission

THE SECURITIES ACT, 1945

RE IVAN ISRAEL, SALESMAN

JUDGMENT ON REVIEW

Hearing January 4, 1946

This is an application to the full Commission for Review of the Registrar's ruling of December 7th, 1945 refusing the applicant's transfer as a salesmen from Messrs. C.E. Hepburn and Company to Messrs. G.H. Wood and Company and also cancelling the applicant's registration with the Commission.

The Commission is of the opinion that Section 82 of the Act imposes a duty on it to review all registrations made under the former Act and that in doing so it is not bound in any way by decisions of Registrars or Commissioners under any former Act. These are only matters of evidence.

Furthermore we are all of the opinion that under Section 10 of the Act there is a duty imposed upon us to suspend or cancel any registration when in our opinion such action is in the public interest.

What is or is not in the public interest is somewhat difficult of precise definition. We feel we must take everything into consideration including our own general knowledge not specifically dealt with in evidence. In other words the duty that is imposed upon us in these cases is to protect the general public.

Accordingly we do not base our judgment only on the evidence that the applicant has been convicted in the State of New York or that he is an American citizen who has failed to establish a true residence in this Province or that he has been in trouble with the Immigration authorities or that he has taken part in transactions dealt with by former Commissions where restitution has been made by his employers. We have had the advantage of hearing his story and observing him under Examination and have formed an unfavourable impression.

We are unanimously of the opinion that the Registrar's decision must be sustained. Judgment accordingly.

January 11, 1946.

Ontario Securities Commission

THE SECURITIES ACT - 1945
RE HARRY L. LESTER - SALESMAN
Hearing February 18, 1946

RE JULIUS LEVINE - SALESMAN
Hearing February 21, 1946

JUDGMENT ON REVIEW

On this Review of the registrations of the above-named salesmen, we have decided to make the one set of Reasons apply to both. Until they were reinstated in August, 1944, they worked together as a team. Generally speaking, in all questionable activities on record with the Commission when one was in difficulties the other was in the same difficulties. We heard the cases separately but feel that in the circumstances one set of Reasons will do.

Both have been convicted in the Criminal Courts on two different occasions. Both convictions had to do with the sale of securities. Generally their selling methods in the cases complained of follow a steady pattern of high pressure. Indeed it would be difficult to find any better examples of true high pressure salesmanship and overreaching than what is to be found in the evidence before us.

Their manner of giving their explanations and the explanations given impressed us most unfavourably. A former Commissioner wrote their solicitor on December 30th, 1943 "As a result of our previous experience with them they are certainly not the type of person who should be selling securities." We agree and are somewhat puzzled as to why there should have been any change of viewpoint when they were reinstated in August, 1944.

We are all very definitely of the opinion that it is not in the public interest that these men should continue to hold registrations as salesmen. Accordingly, their registrations are cancelled.

February 27th, 1946.

Ontario - Securities Commission

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THE SECURITIES ACT, 1945
GARNET J. PARR - SALESMAN
REVIEW OF REGISTRATION
Hearing 11th February, 1946

This is a review of Mr. Parr's registration as a salesman.

Parr was warned in September, 1938, following a complaint by The British Mortgage Company on behalf of a holder of the Trust Company's guaranteed investment certificates. Further complaints have been made with reference to the Mason, Beaton, Anthony and James transactions following the activities in Agawa in the Spring and Summer of 1939. His registration was suspended in September, 1939, as a result of the first three complaints. The James transaction had not as yet come to the attention of the Commission.

He was shortly reinstated, the only apparent reason for immediate reinstatement would seem to be in order to afford him an opportunity to make restitution. The transactions in question are of low order. Parr in fact did not attempt to justify them; but sought to place the blame upon different salesmen who worked with him. He also pleaded inexperience. It should be noted that he was first granted a license in 1936, and that he had already been warned regarding his methods. The objectionable tactics employed in the Beaton and James cases are not the result of experience or lack of experience; but are extreme cases of over-reaching.

He was convicted on the 13th of November, 1940 for violation of the Securities Act and fined $300.00. His registration was suspended and again reinstated.

His chief submission now is that he has mended his ways, and points to the lack of complaints since his conviction in 1940. We are not favorably impressed either with Mr. Parr or his submission. He has been previously warned and has been under suspension twice, and has readily adopted improper sales methods. The lack of complaints may be attributable to market conditions over the period. Under different conditions we consider he would revert to his earlier methods.

The registration should be cancelled.

February 27, 1946.

Ontario Securities Commission

THE SECURITIES ACT, 1945
H. A. MORTON - SALESMAN
JUDGMENT ON APPEAL FROM THE REGISTRAR
Hearing February 1st, 1946

This is an appeal from the Ruling of the Registrar refusing to transfer Morton's registration and recommending that his registration be cancelled.

H.A. Morton, as his name now is by Deed Poll was registered as a broker in 1930 at the age of sixteen. In 1934 he was charged with fraud connected with the sale of securities, and on January 21st, 1935, was convicted and sentenced to six months determinate and six months indeterminate, and served from two or three months of his sentence. He claims that his lawyer was given $200.00 in order to appeal his sentence, but that his lawyer did nothing. The lawyer in question is now dead.

Morton applied for registration as a broker on the 8th day of December, 1942. The application was granted on the same day. He explained to the Commission at the time that he had been in the jobbing business during most of the time prior to the outbreak of war, but since the outbreak of war had been engaged for a considerable time in activities, the nature of which he was bound under oath not to divulge. He even suggested that he would see Chief of Police Draper, in order that the Chief of Police might explain the situation to the Commission. But nothing came of this, the suggestion was apparently overlooked, Morton still insists that he is bound by an oath of secrecy.

We are not concerned as to whether he was engaged on any secret mission. We are, however, concerned with the fact that there is no actual record of his employment over a period of years, we are not entitled to assume that his statement is false, but we are, at least, skeptical and feel that it would be a very simple matter for Morton to give us through one of his superiors some assurance of the truth of his story.

We do not propose to review the sentence of a Court of competent jurisdiction. The only mitigating circumstance respecting this conviction, which would normally call for consideration is his age at the time of the offence. But this may be ruled out, when he had already had some four years experience in the brokerage business.

There is nothing tangible, which would tend to offset his otherwise unsatisfactory record. His personal characteristics do not assist his cause; on the contrary they invite caution in dealing with a person who managed to obtain a broker's license at the age of sixteen. He has ability of a kind, which if directed in the wrong direction would be a serious menace to the public. There is no real evidence that it has ever been fully directed in the right direction. We cannot, on the strength of the material before us take the grave responsibility of continuing his registration.

The appeal is dismissed.

February 27, 1946.

Ontario Securities Commission

(7)

THE SECURITIES ACT, 1945
RE ALLEN E. ROSEN (A. E. ROSEN & COMPANY)
JUDGMENT ON REVIEW
Hearing January 25th, 1946

Rosen's case has caused us considerable difficulty. However, we have come to the conclusion finally that his registration as a broker must be cancelled.

He obtained registration as a general broker on October 5, 1944. In his application he disclosed two convictions in the Province of Quebec, one in 1937 for acting as a broker without a license and the other in 1941 for selling an unregistered security.

He had been registered as a salesman in 1941 and had a lot of experience in the securities business prior to that. He is an American citizen by birth although he is now a Canadian citizen by Naturalization. Prior to coming to this country he had registration as a salesman with some six different brokerage houses in New York and Chicago. We cannot but consider, having in mind his experience, that he likely well knew what he was doing when he violated Quebec Securities laws. In other words, his violation can hardly be described as merely technical.

In addition to this, while he was acquitted on the charge, he was tried for conspiracy to import United States securities into Canada without permission of the Foreign Exchange Control Board. This was in 1941. At the trial he appears to have taken the position that he was only a broker in the transaction in question. On the investigation before us he took much the same position. He made no denial of being mixed up in the transaction as a result of which the charge was laid.

There is another important point involved in connection with his application for a brokerage registration. In a letter accompanying the application, his solicitor put the matter in these words "He has excellent connections with brokers and financial institutions and while he does not intend to engage in the direct sale of stock to the public, he has felt that he should be licensed as a broker so that he might be free to carry on his activities as an underwriter and promoter without fear of technical violation of the Act because of his financing transactions."

We do not believe that a broker's registration should ever be granted on such terms. Either a broker is one who intends to deal with the public in the terms of the definition in the Act, or he is not. We do not think the Commission should take any power to grant brokers' registrations to people who merely wish to provide a defence in the case of illegal activities as underwriters or promoters.

Accordingly, we are all of the opinion that the registration should be cancelled.

February 4th, 1946.

Ontario Securities Commission

THE SECURITIES ACT, 1945
RE JAMES ROSS
JUDGMENT ON APPEAL FROM THE REGISTRAR
Hearing January 22, 1946

This is an appeal to the Commission by the above-named salesman from a ruling by the Registrar refusing his transfer from one brokerage house to another and cancelling his registration with the Commission. The Appellant has a long record of transactions in selling securities to the public which former Commissions have required him to reverse and make restitution. At least one of these transactions occurred before November, 1936 when the Appellant, then in Montreal largely because of a threatened prosecution in Ontario, wrote the Commissioner a letter full of promises to comply with The Securities Act if his registration was restored. During this very period when in Montreal he appears to have been convicted and fined for selling securities without a license contrary to the laws of Quebec. On March 2, 1937 his registration was restored largely on his own representations and promises to the Commission.

However, after his restoration to good standing he continued to get into trouble because of his selling methods and more than once was compelled to make restitution. There is little doubt that he had no scruples about aggressively selling highly speculative stocks to people who because of age or other conditions he must have known could not afford to speculate. In one such case the customer was completely wiped out and after the event he gave her a gratuity of some five hundred dollars.

The Appellant was able to produce a great number of character testimonials at the Hearing. We prefer to consider the case on the facts. The only comment we have to make on the testimonials is that they appear to be as reckless as they are effusive.

On the record we are all of the opinion that there is little chance of the Appellant discontinuing his overreaching methods of salesmanship if granted registration. Accordingly, the ruling of the Registrar must be upheld and the registration cancelled.

January 29th, 1946.

Ontario Securities Commission (9)

THE SECURITIES ACT, 1945

JACK ROSEN - SALESMAN

JUDGMENT ON REVIEW

Hearing January 17th, 1946.

This is an appeal from the Registrar's refusal to register Rosen as a salesman.

Normally there would be no feasible reason for Rosen, at the age of thirty-two giving up his trade as a Presser and engaging in the sale of securities. The reason he advances is that owing to injuries he received in the course of Military training he is unfitted for his former employment. The extent and nature of such injuries is no doubt a matter of record, and as a matter of procedure records of this type should be produced by an applicant, if they are likely to have any bearing on the ultimate result. In view of the many discrepancies in Rosen's evidence, the Commission is not satisfied that he has given the true facts which prompted his decision to change his employment.

His answer to the question in his application respecting convictions is misleading. He admits a conviction for gambling when the fact is he was convicted in August 1940 for recording bets. There is a considerable difference between gambling in the ordinary sense of the word and being a part of organized gambling - a difference which should be appreciated when the question of trading in securities is involved. The distinction, however, is not the important consideration. The important consideration is that from the outset Rosen saw fit to establish a false position with the Commission.

We are not unmindful of his war service; but in 1940 at the age of twenty-seven, when out of employment, he evidently preferred organized gambling to enlistment. He was also charged with theft in 1940. This was disclosed on appeal and not in his application or to the Registrar. He offered a most plausible explanation of having taken a bond coupon to the bank to have it cashed, as a favour for someone who had dropped into his father's shop, and it turned out the bond was stolen property. His story has been checked with police records, which disclose that he won the stolen bonds in a gambling game.

It is not in the interest of the Public that this applicant, lacking the necessary qualifications, and with his past associations and record should be licensed to sell securities. He has over-all displayed an attitude, in matters of consequence, typical of the attitude this Commission must combat, if the standard of trading is to be raised to any appreciable degree.

The appeal is dismissed.

January 29th, 1946.

furnishing information regarding his employment during the five years prior to his first application in 1934, omitted to disclose that during a considerable part of the five years he was out of circulation as an insurance salesman, he was laying the foundation for a continuing subsequent program of non-disclosure. We do not believe that the Security business should become a haven of refuge for people whose conduct prevents them carrying on their former activities, at any rate because of failure on the part of an applicant to make full disclosure of misdeeds and convictions.

We are all of the opinion that the registration should be cancelled.

February 27, 1946.

Ontario Securities Commission

THE SECURITIES ACT, 1945
M. F. BURROWS & COMPANY - MELVIN FRANK BURROWS)
JUDGMENT ON REVIEW
Hearing Jan. 31st and Feb. 15th, 1946

On this Review we must determine whether the continuation of this broker's registration is in the words of Section 10 of the Act "in the public interest."

The greater part of the evidence consisted of complaints against the former brokerage house of Burrows, Broadley and Company of which Burrows was a partner. Generally speaking, the record of this firm was one of "boiler room" tactics and high pressure advertising and circulars. Complaints were voluminous as were also warnings by the Commissioner. Finally, in March of 1937 the Commissioner issued an order that the registration was not to be renewed.

Burrows in his explanations indicated that he was completely out of sympathy with the methods employed. In fact he says that the registration was taken away because of his own representations to the Commission. On his own story one must conclude that even if he was out of sympathy with the methods employed, he must have enjoyed the financial advantages which accrued for some three years at any rate.

Burrows' big difficulty seems to be a lack of responsibility both to the public and to the mining industry. A broker in mining issues has a high duty in both cases. When he received registration for his present company, the Commissioner took the trouble to write his solicitor a letter under date of April 23rd, 1937, warning him against the methods employed by the former firm. Burrows says he has done no selling by telephone whatsoever in the new firm. We accept his statement as to that but are still of opinion that he is lacking in responsibility.

He was charged with a violation of The Securities Act in Chatham in 1944. He was convicted by the Magistrate but on Appeal before the County Court Judge he was acquitted. The fact that he was charged, convicted and subsequently acquitted has created no prejudice we think on our part towards Burrows. In his Reasons for Judgment the learned County Court Judge made reference to a matter which he said quite properly was irrelevant to the charge before him. Reference was made to the set-up of Burco Prospecting Syndicate, namely that of 1000 units authorized 500 had been issued to Burrows himself for a property and 400 to one, J.E.Ayrhart for another property. That left but 100 units for sale at $10.00. Under the Securities Act as it then was, syndicates were permitted to sell securities without registration for the purpose of financing prospecting expeditions or for preliminary mining development. It may be that Burrows was operating within strict legal rights but such a set-up impresses us most unfavourably, as the amount of money raised could accomplish but little in the way of mining development and prospecting was not involved. We regard the transaction as a pure evasion of the spirit of the legislation in regard to mining syndicates and as evidence of a lack of responsibility on the part of Burrows towards the public and constructive mining development as well.

A day or so after we had heard the evidence in the Review of Burrows' registration and regarded the hearing as over, our attention was called to an advertisement of Burrows appearing in one of the local mining papers. Our analysis convinced us that the advertisement was misleading and contained flagrant misrepresentations. Accordingly we summoned Burrows to appear again before us in connection with the advertisement. He then quite freely admitted, as did his Counsel, that the advertisement was misleading and did contain misrepresentations. His excuse was that he had telephoned the information on which the advertisement was based to the Editor of the newspaper and that it was the fault of the Editor that the advertisement was what it was. He

pleaded in extenuation that there was no time for checking or proofreading, as the paper had to go to press immediately.

This incident is quite consistent with the general pattern of recklessness towards the public displayed during his time as a broker with Burrows, Broadley & Company and later in his activities as the owner of M.F.Burrows & Company. As we have said in another case, we cannot permit brokers to escape responsibility for fraudulent circulars because they allege the fault lies with someone they employ.

After serious consideration of the evidence, we have all come to the conclusion that it is not in the public interest that Burrows' registration with the Commission should be continued. Accordingly an Order will go for its cancellation forthwith.

February 27th, 1946.

Ontario Securities' Comm

THE SECURITIES ACT - 1945

RE THOMAS STANLEY DAVIES - London

Hearing January 28th, 1946

This is an appeal from the Registrar. We consider Colonel Annundson the Registrar has properly exercised his discretion in refusing to register Mr. Davies as a salesman. No one is in a better position to judge the merits of the application than the Registrar who represented the Commission at London during the period under review, and who was instrumental in clearing up a serious situation in Western Ontario at the time. Davies played a minor. but by no means insignificant part in creating the serious situation.

Davies' absolute candor, during the hearing operates in his favour, as does his creditable war services. But his candor cannot be accepted as indicating a complete change of heart, as he had really no alternative, in view of the Registrar's first hand knowledge, of the facts we are obliged to consider. No useful purpose may now be served by a detailed review of the charges, complaints and convictions, as the facts are not in issue, Davies having conceded that the record before the Commission is accurate. The material facts are that he was charged both with fraud and theft, under the Criminal Code. The charges were withdrawn, presumably after restitution had been made. He was convicted on two counts for violation of the Securities Act, and given suspended sentence under two other charges. It is true that all these charges were laid at the same time, but his record cannot be attributed to a temporary lapse, for after his experience with Huntley Securities he rejoined his former associates. During this latter period he traded without a license and even went to the length of assuming the alias "J.S. Dey".

War service is properly a balancing factor in favour of any applicant, but it cannot offset the formidable record, with which we are confronted, unless the purpose and intent of the present Act is disregarded.

Davies was of a mature age when he employed these objectionable selling methods. The most charitable thing that may be said of him is that he was easily led. Although there may be certain indications that his outlook has undergone a change, we are not prepared to accept the grave responsibility of granting him a license.

The appeal is dismissed.

February 4th, 1946.

Ontario Securities

SECURITIES ACT - 1945

RE J. W. ARMSTRONG & COMPANY

Judgment on Review.

Hearing January 26th, 1946.

This is a Review of the above named broker's registration pursuant to a summons to show cause under Section 82.

J. W. Armstrong was registered as a general broker in June 1944. He had previously been engaged in selling securities since 1932, during which period several complaints were received by the Commission. We do not propose to review each individual complaint; but will refer to some of his methods which are typical of the methods which are undermining the public confidence.

Mr. Ellis was a customer of Armstrong in a small way. Shortly after Ellis' death Armstrong called on his widow, whose only asset of any consequence was $5,000.00 life insurance she had received on the death of her husband. His tactics in this instance are similar to those used on certain other occasions. He first sold her a favourably known stock (Wright Hargreaves) in the amount of $1,250.00, and then within a few days persuaded her to switch to Sante Fe, which was not only a highly speculative, and eventually worthless investment, but the shares sold were pooled shares. Restitution was made after the Commission intervened.

His transactions with Miss Connerty and her mother were on a comparatively large scale. This is the only case which has come to our notice in the course of the current Review of registrations, that the salesman is said to have had the effrontery of disparaging investments in victory bonds and war savings certificates. The allegation rings fairly true when read in conjunction with the allegation of the Montreal Better Business Bureau that he had told a prospective customer in 1933 that Bank deposits were not safe. Miss Connerty and her mother were eventually traded out of Imperial Oil, Imperial Tobacco, Bell Telephone, Loblaw "A", Fanny Farmer and Dominion Bonds, all of which they had either inherited from prudent investors or acquired on competent advice. They ended up with over twenty-five hundred shares of Sante Fe, acquired at a price of .75¢ per share, oil stocks and other holdings. Besides the question of alleged violation of the Securities Act in connection with this transaction, the facts in themselves show a deliberate, persistent and unfortunately successful plan to victimize these people.

In connection with Mrs. Steele, Armstrong insists that the Wyandotte bonds she received in an exchange were an excellent security. The transaction was on a small scale, and was a grossly improvident one for her, when the sale of thirty shares of Wyandotte Common at $5.00 was included in the transaction. He does not deny the statement in the Commission's record that the Common shares were only worth .50¢ and in fact he offered these shares to Mrs. Connerty at $1.00. There again are charges of violation of the Securities Act. Mrs. Steele was one of three who laid charges against Armstrong.

The other two complaints were Miss Young and Miss Lafferty. The latter is a distressing case, being confined to hospital since 1912 with a broken back. Armstrong denies having sold Miss Lafferty; but his explanation is merely evasion, as he actually closed the sale with Miss Young, he knew that Miss Young was acting on Miss Lafferty's behalf. He appeared before the Magistrate at Chatham on five charges of violation of the provisions of the Securities Act. He was arraigned on two charges, and upon complete restitution being made and upon payment of costs the Magistrate

Ontario. Securities.

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THE SECURITIES ACT, 1945

RE W.E. DAVISON & COMPANY

JUDGMENT ON REVIEW

Hearing January 14th, 1946

This is a Review of the Registration of the above Broker as required of the Commission under Section 82 of the Act.

As pointed out in the Reasons given in the case of Ivan Israel the Commission is of the opinion that its duty is to determine whether it is in the public interest that the registration under Review should be cancelled or continued in force. While the broker in this case seemed to take a strong position that the Commission should not review complaints arising at times prior to restoration or renewal of his registration, we are of quite a different opinion. The Legislature by Section 82 has imposed on us a duty to review and we intend to do this as thoroughly as we can from the available records. In addition to this we do not think we are in any way estopped by or bound by the decisions of former Commissions.

An impression seems to have grown up among brokers and salesmen generally that if restitution has been made to complainants in questionable transactions, such a degree of respectability and honourable dealing has been evidenced that the broker or salesman is entitled to approbation rather than discipline and under no such circumstances should cancellation be ordered. We do not accept any such philosophy. The Act which we are charged with administering obliges us as a primary consideration to protect the public interest. The Commission is not an arbitrator of private rights. That is a matter for the Courts. Neither do we intend to go beyond the powers conferred on us by the Act and constitute ourselves a benevolent collection agency.

The broker in this Review has been in trouble with the Securities Commission in Manitoba in 1934-36. When confronted with the evidence, his explanations were contradictory and far from convincing.

There were quite a number of cases in Ontario where complaints were made and as a result restitution followed. A very glaring case is that of a complaint made on behalf of Mrs. Jennie H. Kidd of Port Hope, Ontario. While the applicant seemed to take some pride in the fact that he had been an exceptionally generous person after the harm had been done, we regard the whole transaction as being one of a most callous and unscrupulous character, particularly when it is considered that her age was 92 years.

Generally speaking we are all of the opinion that this man is not of the kind who should continue to be given an opportunity to employ the selling methods which he has employed in the past. Accordingly his registration as a broker is hereby revoked.

January 29th, 1946.

PHILIP H. DOVER

P. H. DOVER and COMPANY

Review of Registration.

This is a review of Registration pursuant to the provisions of Section 82 of the Act of 1945.

The fact that this applicant gave a misleading answer to the question in his application form regarding former convictions, raises an important question of policy. The answer given raises the implication that the proceeding in question proved abortive. The fact is Dover pleaded guilty. In our view the Commission should not be called upon to consider alleged mitigating circumstances surrounding a conviction, unless a full and accurate disclosure has been made in the first instance.

The evidence now offered regarding the charge to which a plea of guilty was entered is not convincing. It evidently was not accepted completely in January 1930, when a full investigation was made and only a temporary registration was granted, subject to the condition that a monthly report be made to the Commission. There is no evidence that Dover ever attempted to comply with the condition, and his registration lapsed in the same year (1930).

Even if there were mitigating circumstances surrounding his plea of guilty, his subsequent conduct must be reviewed to see whether the limited confidence placed in him at the time has been justified. There is a complaint against him in January 1932. He states he was selling his own stock at the time, evidently seeking to avoid the consequence of a violation of the Act (selling without a license). But his evidence otherwise discloses that he was a jobber and on his bald statement the Commission is not entitled to treat this as an isolated trade within the narrow compass of R. S. O. 1937, chapter 265, section 8 (b), section 19 (b) of the present Act. Moreover the transaction appears to be most irregular and restitution was made.

There is a further complaint in February 1933, when he was still without a license. Then in 1940 there is the Murray complaint, when Dover and others were called and appeared before the Solicitor for the Commission, and a fairly comprehensive report was made. He meets this with a blanket denial, even to the extent of ever having appeared before the Commission. An administrative tribunal cannot function in the capacity we must function by virtue of the provisions of section 82, unless it can place reliance in the records available. Dover's attitude in the Murray matter fully demonstrates that little, if any, reliance can be placed in the explanation offered by him during the hearing.

In general he is at best a fair weather operator, as indicated by a period of ten years when he did not apply for a renewal of his registration. His means of support in the meantime is a matter of mere speculation. He is not likely to contribute stability to financing the Mining industry. His only venture as a broker in underwriting an issue is of the questionable type, and he was unable to furnish detailed information as to the results of this single venture.

The registration of P. H. Dover and Company as a broker should be cancelled, and a renewal of Dover's registration as a samesman refused.

January 29th, 1946.

Ontario Securities Commission.

THE SECURITIES ACT - 1945

LEWIS SMITHKEN

JUDGMENT ON APPEAL FROM THE REGISTRAR

Hearing February 7th, 1946

This in form is an appeal from the Registrar, in substance it is a review at the request of the appellant of the circumstance under which he was formally denied a license.

It appears that he was refused a license, owing to his connection with Allan Thompson and Company Limited in 1936 - 1937. The appellant seeks to establish that the Commission took an incorrect view of his relationship with that Company and supports his contention by asserting that the Commissioner at the time in fact altered his views and intimated that registration as a salesman would be granted. Shortly thereafter Smithken became interested in a commercial venture and consequently the accuracy of his present contention was not put to the test. There is no official record indicating that the Commissioner had altered his opinion.

Smithken has been interrogated on several occasions since 1936. The memorandum made as a result of these interviews contains several conflicting statements. He, which is not unusual, challenges the accuracies of these records. We repeat the statement made in P.H. Dover and Company that an administrative tribunal must place reliance on its own records. In this instance we are not obliged to rely on memoranda. The same type of conflicting statements are to be found in his evidence during the hearing, and the transcript of his sworn testimony before the Commission in December 1945. He was confronted with these conflicting statements, according to the accepted practice on that behalf.

The question is reduced to a narrow issue, if we adopt the issue as formulated by the appellant, namely; whether he had a proprietary interest in the organization trading under the name of Allan Thompson and Company Limited. The inference being his fitness rests solely upon the determination of this question. We do not admit that this is the only consideration: but are content to treat it as the main question to be determined. Over a period he has advanced three propositions. The first was that he advanced $10,000.00 to the Company simply as a loan. The second was to the effect that the advance was made solely in connection with the underwriting of the Colonial Gold Mines issue. The third proposition given on this hearing and the logical one to consider is that and we quote his words as noted without having a transcript of the evidence before us. "I put up money - was to get back investment, and share of profits." If he was attempting to establish the existence of a partnership he could scarcely have stated his position more precisely in order to bring himself within the definition of a partnership as defined by the Partnership Act. In other words he advanced capital which was to be a first charge on the profits realized, after the return of capital, he was to share in the surplus profits. This transaction as described in his own words clearly establishes the existence of a partnership between the individual and the Limited Company. That is the legal aspect. The factual aspect was not seriously questioned namely: that to all appearance he was the real force behind the operations, and the person who possessed the necessary knowledge to operate the business in question.

Throughout the contention of the Commission has been that Smithken was a "front" for some undisclosed principal. This contention was not fully developed on the hearing, and a decision in the matter is not necessary. His only other venture in dealing in securities, within our knowledge, is definitely of the questionable variety.

Ontario Securities Commission. (17

THE SECURITIES ACT - 1945

THE SUMMIT SECURITIES (William J. Simpson)

Judgment on Review

Hearing January 24th, 1946

This is a review of the above named broker's registration pursuant to the provisions of Section 82 of the 1945 Act.

The first objection on record to the business methods of this broker is in respect of an Information Bulletin issued regarding Algoma Summit Gold Mines Limited. The circular containing over seven folios was deemed to be so objectionable, that it was brought to the attention of The Commission by a member of the Toronto Stock Exchange, after discussing it with a mining engineer. The Commission had already acted, as appears from a memorandum dated June 17th, 1938, authorizing instructions being issued to Simpson that any repetition of such a statement would probably result in concellation of registration. On September 30th, 1938, Simpson was advised by letter that no further advertising was to be sent out, unless passed on by the Commission.

In February 1939, Summit Securities inserted a colourful notice in the Canadian Mining Recorder, referring to the performance of the Algoma Summit Mine in the years 1937 and 1938. There is no evidence that advertising in any form was authorized. Simpson does not suggest that it was authorized, and it would be absurd to suggest that it was, having regard to the nature of the notice, and the financial condition of the Mining Company at the time.

At this stage Summit Securities was liable to have its registration revoked for disobedience to an order of the Commission. The fact that no action was taken in this and other similar cases, is the obvious reason for enacting Section 82 of the present Act, not only empowering the present Commission to review existing registrations, but imposing a duty on us to make a review.

Simpson's action in ignoring the instructions of the Commission was not a minor matter or oversight. He was taking a step which the Commission obviously would not have tolerated. At the time Algoma Summit had issued debentures in the amount of $117,000.00 to secure its indebtedness to ordinary trade creditors, it was in default in payment of wages, and whatever the possibilities of the mine otherwise may have been, it had through lack of sound financing, mismanagement or other causes reached a dead end. A meeting of shareholders had been called for the obvious purpose of ascertaining what, if anything, could be salvaged.

In spite of these adverse conditions, for which he apparently had no immediate solution, Simpson saw fit to advertise in the manner indicated. He also wrote J.E. Guest of Dallas, Texas, in reply to an enquiry from Mr. Guest, during the same period. In respect of the matters covered in the letter, the writer did not retract from the position taken in the highly objectionable bulletin of 1938. He described the mine as a proven young gold producer, and neither directly nor by implication refers to the difficulties which were presently being encountered.

Then when we turn from Algoma Summit Mine to Summit Securities for the corresponding period, an equally unsatisfactory condition is disclosed. Summit Securities was charged and convicted for failure to account to the Department of National Revenue for Stock Transfer Tax, for the period June 22nd, 1938 to January 31st, 1941. An audit of their books for the six month period immediately following, discloses a deficit of $2,000.00. Although there is evidence that Summit kept track of the amount of tax owing, there is no evidence that

the fund was set aside, apart from the ordinary operating account. This indicates that the ordinary creditors of Summit Securities may eventually bear the burden of the tax collected through Court proceedings.

We consider that Simpson has demonstrated that he has little, if any, conception of his duty to the investing public, or the obligation incidental to operating a business involving the handling of funds belonging to others. We further consider that in the light of his past performance and his attitude during the hearing, it would be futile to expect any real co-operation from him in the future.

For these reasons the registration will be cancelled.

February 4th, 1946.

Ontario Securities' Commission

THE SECURITIES ACT - 1945

H.R. BAIN & COMPANY LIMITED

and

BAIN, NEWLING & COMPANY

JUDGMENT ON REVIEW

Hearing January 11th & 24th, 1946

This is a Review of the registration of H.R. Bain & Company Limited and Bain, Newling & Company, pursuant to the provisions of Section 82 of The Securities Act, 1945.

The proceedings were consolidated on consent. The partnership is a member of The Toronto Stock Exchange and the limited company is deemed to be an affiliated company and thus subject to the Rules and Regulations of the Exchange so far as the same are applicable. The complaints now under Review, with a few possible exceptions are directed against the limited company. This company has been in business since 1923. For the most part the company acts as principal in the sale of issues it has underwritten. At first it dealt principally in Bonds, but in 1934 it extended its operation to underwriting mining issues. In this later endeavour it may be fairly said that it has offered something constructive to the mining industry, the issues offered appear to have been good prospects and were comparatively well financed; there is no indication that it ever embarked on a purely stock selling proposition.

The complaints may conveniently be considered under two main headings. First, irregularities in the ordinary course of trading including offences at common law such as overreaching and/or taking an unconscionable profit, and statutory offences under the provisions of The Securities Act. Next, there are complaints received from responsible authorities of other jurisdictions, concerning violations of their security legislation, over which this Commission has no direct control but which must be considered in the light of the undertakings given by the broker at the time and the consideration flowing from such undertakings.

There are some thirty-one complaints within the first classification. In the case of eight of these the Commission intervened and restitution or some form of adjustment was made. The other twenty-three cases, in which no action was taken separately may not be of much weight, but the combined effect of them is fairly formidable. It is neither practical nor necessary to attempt to analyse these complaints individually. It is abundantly clear that some are without merit; on the other hand, it is equally obvious that they serve only as examples, or a pattern of the methods employed.

Restitution does not alter the nature of the transaction, nor is it likely to improve the standard of trading. It was submitted that it was the Company's policy to reverse a transaction, when a customer was dissatisfied. This contention is not only refuted by the facts in relation to specific cases in which the Commission intervened,- facts indicating a degree of compulsion; but is entirely inconsistent with views expressed in a letter to a customer, over the signature of H.R. Bain, dated January 27th, 1941, Exhibit 76 and the facts contained in some of the correspondence from customers to the Commission.

A single clear cut case of irregular trading, especially if responsible officials are fixed with the blame, lends weight to other instances in which the record is not as complete. The Mussen exchange of Bonds (22nd July, 1932) serves as a striking example of an unconscionable profit. Mr. Newling participated in the negotiations,

which cuts off the usual excuse of blaming the salesman. Mrs. Mussen was induced to exchange:-

5,000 Abitibi at	26 - 26¾
10,000 Ontario Power Service at	68 - 68½

for

5,000 Starr Manufacturing at	9 - 15
10,000 Lord Nelson Hotel at	41 - 45

The prices are taken from a memorandum made on the 26th of July. Even if the broker is given the benefit of the range of price both ways this represents a profit of $2,850.00. A memorandum made on the 29th of July, a week after the transaction notes that Bain sold 6,000 Ontario Power at an average of $60.00. Why sales were made at this price is not disclosed, when the notes state that the Bonds were selling at $68.00 at the first of the week and were still selling at 62½ - 64. However, assuming the sale at $60.00 was a bona fide transaction, there is still a profit of $2,050.00. At the time this memorandum was made Bain represented that the market on Lord Nelson had risen to from 58 - 60; but this is contradicted by the statement that he was still trying to fill the order at 45. The position now taken by the broker is that the price was 58 - 60, which is not supported by any tangible evidence. There is no reason to accept the present evidence in face of the record made at the time. If the price on the Lord Nelson of 60 is accepted, the profit resulting would be $550.00, after giving the broker the benefit of every possible doubt in respect of a transaction, which according to Mr. Bain's evidence warranted a profit of one point. On the basis of the record the transaction is indefensible. On the most favourable basis it still shows an unwarranted profit. Restitution was made. The transaction now stands as a sample of the trading methods which prompted so many complaints, often poorly expressed and incomplete.

The complaint of Mrs. Brown, a widow, dependent on the income from her investments is not so complete; but it affords an excellent example of restitution under compulsion. Her solicitor had recovered $2,100.00 before complaining to the Commission. Further restitution was made in the amount of $4,800.00. Included in her purchase made in February, 1932 was $6,000.00 Windsor Hotel Bonds at from 92 - 98. The company had underwritten these Bonds and it would seem they were confronted with a loss, owing to the business depression at that time. The Brown transaction was described as outrageous then and no explanation has been offered which materially discounts that opinion. It would seem that the Company was determined to curtail its losses on its underwriting regardless of the methods it had to employ.

The majority of the complaints are made in respect of sales of mining issues, involving violation of The Securities Act and overreaching. The case of the County Court Judge, over seventy years of age who was induced to purchase 2,000 shares of Darwin at .55¢ is not a conclusive case of overreaching; but it was, at least, a questionable transaction and Mr. Newling assisted in effecting the sale. Restitution was made. Mrs. Axford's case is a clear case of overreaching, coupled with alleged violation of the Act. Her only asset beside a small house was $3,000.00 MacLaren Quebec Bonds, she was traded out of this income paying investment into 2,000 Darwin at .65¢ and some Red Lake, sometime in 1935, probably towards the end of the year. Darwin treasury shares never sold higher than .55¢. It is suggested the financing of Darwin had been completed at this time. This appears doubtful. In any event, she was over sold; considering her circumstances the transaction from the outset was ruthless. Restitution in the amount of $1,500.00 was made.

There are other cases of restitution but the Axford case serves as the best example. The complaint from New York state involving the Buffalo branch office, in which restitution was made indicates

either fraud or gross carelessness.

The letters of complaints respecting the twenty-three transactions in which no action was taken speak for themselves. The evidence offered by the brokers in fact contains very little which would not have been conceded in their favour in any event. An isolated charge of misrepresentation or an offence under the Act may have little effect, but the cumulative effect of these complaints may not properly be overlooked. Overreaching on the other hand is a question of fact, which may be determined from the general picture outlined in the correspondence, even when the writer has no intention of establishing the necessary facts. The case of Mrs. Lancaster appears to be a plain case of over selling, over a period. The case of Miss Patterson is directly in point, she invested $2,400.00 in penny stocks, when she was only able to work part time due to ill health. Mr. Newling is conversant with this transaction. He did not question her statement regarding her earning capacity, but merely stated in effect that she understood what she was doing. Miss McAllister's case appears to be a further example, considering the amount involved. It should also be noted that one, at least of the complainants, a man of standing in his community, had not suffered financially, but saw fit to complain regarding the aggresive methods used in attempting to effect a sale.

Pickle Crow, one of the earlier issues, turned out to be a most profitable investment for those who were fortunate enough to retain their holdings. This success was evidently of great assistance in selling subsequent issues. The case of Miss McAllister may indicate a policy of switching customers to other issues, before the real value of the mine was generally known. Mr. Newling evidently noted the trend of the evidence and appreciated the implication, as he offered the information that he had switched from Pickle Crow to Green Stabell. Miss McAllister whose transactions were on a large scale, did so on Mr. Newling's advice, so she states. Mr. Newling's statement proves nothing, as Green Stabell was eventually listed and sold as high at $1.80. An experienced trader, such as he, might very well manage to take advantage of the most pronounced advance in price in each issue, and there is nothing to indicate when he made the switch.

The second type of complaint is not necessarily of secondary importance. The activities of this company outside the province has done more to discredit Ontario, than the operation of any other brokers, which have come to our notice during the current review of registrations. The attitude of its responsible officers goes to the very root of administrative law. They apparently gave their undertaking to discontinue unlicensed activities as a matter of routine, without any serious intention of implementing it. Their present attitude appears to be that by warning their salesmen, they had done all that was required.

Nothing could be further from the point. The undertaking to their knowledge was communicated to the authorities demanding action. In return for their undertaking they received an implied, if not an expressed consideration, namely: forbearance on the part of the complainants from prosecuting the offences in the respective jurisdictions. During the years 1940 - 1944 inclusive, there were twenty-two complaints, including complaints from every province except Prince Edward Island, including complaints of selling issues unqualified in the province in question, selling without a provincial license and telephoning to private homes. Mr. Bain suggests that many of the complaints were forwarded long after the event and the practice had actually been stopped. A reference to the issues being offered fairly accurately fixes the period of the transactions, with the result that the objection is not well taken.

Again the blame is placed on the salesman. It would have been a simple matter to check the very substantial telephone bills incurred. The proposition that a firm cannot control its salesman is tantamount to holding that the sale of securities cannot be regulated.

There was evidently no real attempt to curtail the salesman regarding this branch of the operation. The proposition cannot be accepted in principle in the case of ordinary trading, nor is it borne out in fact, as the record shows that Mr. Newling was involved in many of the transactions.

The damage resulting from offences against other security laws cannot be measured in dollars; but it is potentially great. It is a matter of common knowledge that United States interests look with disfavour on the manner in which sales are solicited by Canadian firms. It is reasonable to expect a high standard of trading from a Company of long standing and which has enjoyed some measure of success. The few complaints reviewed in some detail both disclose a lack of appreciation of the duty of a broker to his customer and selling methods of a low order.

It is clear some disciplinary action must be taken in the face of the trading methods employed by the Limited Company and the lack of co-operation in the face of an undertaking in the matter of complaints from other provinces. There are no complaints involving the partnership directly and the interest of the public will be safeguarded if they are recognized as a separate legal entity and action is taken only against the actual offenders. The partnership, may, of course, extend its operation so as to include the field now occupied exclusively by the Company, but it is to be hoped that they will not revert to the same methods.

The registration of H.R.Bain and Company Limited will be cancelled.

Toronto, February 27, 1946.

PARLIAMENT BUILDINGS
TORONTO

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ONTARIO

ONTARIO SECURITIES COMMISSION

THE SECURITIES ACT - 1945

RE W.J. NEALON - SALESMAN

Hearing November 30, 1946

This is a Review by the full Commission on the application of the above-named salesman of the decision of the Chairman refusing Mr. Nealon's registration as a salesman with the Commission.

Mr. Nealon has had quite an undistinguished and checkered career in the security business both as a broker on his own account and as a salesman. He appears to have been compelled to make restitution of monies on a number of occasions both before Police Court proceedings and during Police Court proceedings. He did enjoy registration with the Commission for a long period of time. His broker's registration was suspended for cause in 1938. He was convicted of offences against The Securities Act on at least one occasion and his application for registration as a salesman with Wampum Gold Mines Limited was refused in May of 1941. The record discloses that nothing daunted he sold stock in Wampum Gold Mines Limited without registration. Registration was refused again in 1945 and again in October, 1946.

In view of his record we do not deem it in the public interest that he should again have registration. The Order of the Commission refusing registration is confirmed.

T.ronto, December 18th, 1946

PARLIAMENT BUILDINGS
TORONTO

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ONTARIO

ONTARIO SECURITIES COMMISSION

FOR RELEASE MONDAY, DECEMBER 30/46 4.15 p.m.

The Chairman of the Commission wishes to announce that Mr. E.H. Clark, formerly Chief Auditor and Acting Registrar and more recently Executive Assistant to the Chairman, has resigned on account of ill-health and is no longer connected with the Commission.

PARLIAMENT BUILDINGS
TORONTO

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ONTARIO

ONTARIO SECURITIES COMMISSION

FOR RELEASE MONDAY, DECEMBER 30/46 - 4.15 p.m.

Since the last Release by the Commission two more Reviews have taken place.

In the case of Island Central Prospecting Syndicate (Michael Hretchka) of Vancouver, B.C., the decision refusing registration has been confirmed.

The decision of the Chairman refusing registration to Mr. W.J. Nealon, salesman, Toronto, unattached, has also been upheld by the full Commission.

Written Reasons for both decisions are appended.